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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHARTERED ACCOUNTANTS REFERENCE NO.4 OF 1999

Council of the Institute of the Chartered Accountants of India.) ..Applicant.

V/s.

Shri.U.V. Karkhanis, A.C.A., M/s.U.V. Karkhanis & Co., Chartered Accountants, B-7, New Gagangiri Coop. Housing Society, Eksar Road, Borivili (West), Mumbai - 400 092.) ..Respondent.

Dr.Virendra Tulzapurkar, senior Advocate with Ms.Soumya Srikrishna i/b. Kanga & Co. for applicant.

Mr.M.D. Angal, advocate for respondent.

Mr.S.S. Pakale, advocate for Union of India.

CORAM : R.M.LODHA AND J.P.DEVADHAR, JJ.

DATED : 11TH AUGUST, 2004.

ORAL JUDGMENT (PER J.P. DEVADHAR, J.)

. After recording its findings that the respondent is guilty of professional misconduct, the Council of the Institute of Chartered Accountants of India has forwarded the above reference to this Court under Section 21(5) of the Chartered Accountants Act, 1949 ('Act' for short) for passing appropriate orders under the Act.

2. The respondent, a Chartered Accountant carrying on his profession in the name of "U.V. Kharkanis & Co.", is a registered member of the Institute of the Chartered Accountants of India ('Institute' for short).

3. On 19th May, 1992 the Joint Director of Industries, Aurangabad ('complainant' for short) made the following complaints against the respondent:-

> " The Respondent had issued the certificates for consumption of raw material and production for the year AM-86/AM-87 in respect of the following units:-
>
> 1. M/s.Padmakar Engineering Works, Ajabnagar, Aurangabad.
>
> 2. M/s.Hajari Industries, CIDCO Industrial Zone, Aurangabad.
>
> 3. M/s.Ambika Wooden Industries, MIDC Area, Station Road, Aurangabad.
>
> The consumption certificates showed the value of imported raw material as CIF value. The Respondent issued certificates without seeing records since imported value of the raw material should have been shown as value of the raw material and not CIF value. As a matter of fact, the units had no record for past consumption. Naturally based on the CIF value, production value had been worked out and custom duty etc. were not taken into account while working out production figures. It normally showed that the figures were manipulated and certificates issued were not correct."

4. On being prima facie satisfied that the

respondent was guilty of professional and/or other misconduct, the Council of Institute of the Chartered Accountants of India ('Council' for short) referred the above complaint to the Disciplinary Committee constituted under the Act for inquiry.

5. The Disciplinary Committee after recording evidence and after hearing the respondent submitted its report to the Council holding that the respondent is guilty of professional misconduct within the meaning of clause (7) & (8) of Part I of the Second Schedule to the Act read with section 21 & 22 of the Act. The Council concurred with the report of the Disciplinary Committee and after recording its findings to that effect under section 21(3) of the Act forwarded the above statement of case to this Court under section 21(5) of the Act with a recommendation that the name of the respondent be removed from the Register of Members for a period of 3 months.

6. Dr.Tulzapurkar, learned Senior Advocate appearing on behalf of the Institute referring to the certificate issued in the case of M/s.Hajari Industries, Aurangabad pointed out that the respondent had certified that during the period 1986-87 the said unit had consumed 170 MTS of raw materials valued at

Rs.5,10,000/- (CIF). According to Mr.Tulzapurkar, use of the word 'CIF' in the certificate clearly shows that the value given therein is in respect of the imported raw materials. If the raw materials were imported, then, the total value of the raw materials ought to have been the CIF value as well as the customs duty paid thereon. If the raw materials were purchased locally, then, there would not have been any occasion for the respondent to use the words 'CIF' in the certificate. Accordingly, it was submitted that the failure on the part of the respondent to call for further information regarding the total value of the raw materials and issuing certificates showing only CIF value of the raw materials constituted gross negligence in the conduct of his professional duties within the meaning of clauses (7) & (8) of Part I of the Second Schedule to the Act.

7. Mr.Tulzapukar further submitted that there can be no dispute that while computing the total value of the raw materials not only the CIF value but also the customs duty and other expenses incurred have to be taken into account. As a responsible member of the Institute, the respondent ought to have made further enquiry regarding the customs duty, etc. and could not have issued the certificates by only showing CIF

value as the total value of the raw materials. Accordingly, the counsel submitted that the conduct of the respondent in issuing the certificates without making any enquiries constituted gross professional misconduct within the meaning of clauses (7) & (8) of Part I of the Second Schedule to the Act and, therefore, the penalty recommended by the Council to remove the name of the respondent from the Register of Members for a period of three months is just and proper.

8. Mr.Angal, learned advocate appearing on behalf of the respondent submitted that the respondent had categorically stated before the Disciplinary Committee that the certificates were issued after verifying the books of accounts which included cash book, purchase register, sales register, stock register, etc. As regards the alleged discrepancy in the valuation of 170 MTS of raw materials consumed by the unit during 1986-87, Mr.Angal submitted that in his evidence before the Disciplinary Committee, the respondent had categorically stated that the respondent was informed by his clients that no customs duty was payable on the said raw materials. However, as a matter of abundant caution, the respondent had mentioned in his certificate that the value of 170 MTS

was Rs.5,10,000/- CIF. He further submitted that in the absence of any material to show that any duty was actually paid by the unit on purchase of the said 170 MT of raw materials, the Disciplinary Committee as well as the Council were not justified in holding that the certificates issued by the respondent were not correct and consequently, the respondent could not be held to be guilty of professional misconduct. Accordingly, Mr.Angal submitted that the findings given by both the authorities below were wholly erroneous and without any merit.

9. Having heard the counsel on both sides, we are of the opinion that the findings recorded by the Disciplinary Committee and concurred by the Council cannot be sustained. The charge levelled against the respondent was that he had issued consumption certificates showing the value of the imported raw materials at CIF value without taking into consideration the custom duty payable on the said imported goods. First of all, there is no evidence on record to show that the 17O MTS of raw materials were imported by the unit and, therefore, the question of paying any customs duty by the said unit did not arise at all. The case put forth by the respondent was that the raw materials were purchased by his clients

locally. Where the goods are purchased locally, the question of paying customs duty on the said goods does not arise at all. Thus, neither there is any material on record to show that the raw materials in question attracted customs duty nor there is any material to show that any customs duty has been paid by the units on those raw materials. In these circumstances, non inclusion of the customs duty amount in the value of the raw materials cannot be said to be faulty.

10. Secondly, the charge that the average price of the raw materials as certified by the respondent could not be as low as shown in the certificate is also without any merit. The valuation of the raw materials is to be determined on the basis of the actual cost incurred and not on the basis of average cost. In any event, without establishing that apart from the price shown in the purchase bills, the units had paid any other amount towards the price of the raw materials either by way of customs duty or otherwise, it could not be said that the certificates issued by the respondent were erroneous. To find fault with the certificates issued by the respondent only on the basis of the average price of the imported raw materials would be totally in the realm of conjectures and surmises. Thirdly, merely because the word ’CIF’

has been used in the certificates, it does not mean that apart from the CIF value any other amount was paid for the said raw materials as and by way of customs duty. When it is the case of the respondent that the amount mentioned in the certificate is the only amount paid for the said raw materials, in the absence of any evidence to the contrary, it could not be said that the certificates issued were incorrect. Similarly, the charge that the unit had no record of past consumption has not been substantiated. There is no evidence on record to show that the units did not maintain books of accounts. According to the respondent, some of the units were assessed to sales tax/income tax. None of the units have been called upon to produce books of account. In these circumstances, there is no merit in the contention that the figures were manipulated and that the certificates were not correctly issued.

11. For all the aforesaid reasons, we are of the opinion that the charges levelled against the respondent cannot be said to be proved and consequently the findings given by the Disciplinary Committee and concurred by the Council that the respondent is guilty of professional misconduct cannot be sustained.

12. Accordingly, the reference filed by the Council is hereby dismissed.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)